

June 30, 2017

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Comment on Proposed Rule and Notice of Inquiry, CG Docket No. 17-59
Advanced Methods to Target and Eliminate Unlawful Robocalls

Dear Ms. Dortch:

The American Bankers Association¹ (ABA) appreciates the opportunity to comment on the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking (Proposed Rule) and Notice of Inquiry regarding proposed changes to its call completion rules and Telephone Consumer Protection Act (TCPA) rules.² The Commission seeks to permit the blocking of certain automated calls in an attempt to limit consumers' receipt of unlawful "spoofed" calls—i.e., calls in which the caller ID displays a phone number different from that of the telephone from which the call was placed, done with "the intent to defraud, cause harm, or wrongly obtain anything of value."³

ABA supports the Commission's efforts to eliminate illegal automated calls, and we seek to conform that goal with our shared interest in protecting the "reliability of the nation's communications network and [protecting] consumers from provider-initiated blocking that harms, rather than helps, consumers."⁴ As the Commission has recognized, granting companies that provide telephone service (Voice Service Providers) the authority to block certain categories of illegal calls presents the risk that lawful calls made by banks and other legitimate businesses may be erroneously blocked.⁵ To reduce this risk, we agree that regulations should (a) ensure that Voice Service Providers base call blocking decisions on real-time information regarding assignments of phone numbers; (b) establish a "white list" of numbers belonging to legitimate

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

² Proposed Rule, Advanced Methods to Target and Eliminate Unlawful Robocalls, 82 Fed. Reg. 22,625 (May 17, 2017).

³ Truth in Caller ID Act of 2009 § 2, 47 U.S.C. § 227(e)(1).

⁴ Proposed Rule, *supra* note 2, 82 Fed. Reg. at 22,626.

⁵ *Id.* at 22,630.

callers; and (c) establish a process that allows banks and other legitimate callers quickly to regain use of a number that a Provider has erroneously blocked.⁶

We also urge the Commission, if it grants Voice Service Providers authority to block certain calls, to grant such authority only with respect to calls from invalid or unassigned numbers or calls at the request of the subscriber to the number. The Commission should not permit other criteria to form the basis for additional call-blocking authority *unless* those criteria allow providers to verify, with a high degree of certainty, that the caller is illegally spoofing the number from which the call purports to originate.

Furthermore, it is important to recognize that the proposed blocking authority will not solve entirely the problem of illegally spoofed calls, because the individuals or entities making these calls can quickly alter their approach to spoof other numbers illegally. Consequently, we support the work of the Commission to identify—and stop—the bad actors that illegally spoof calls.

I. Background

Consumers receive important communications from their financial institutions and other businesses through automated voice calls and text messages. Financial institutions use these channels quickly to advise customers of a number of time-critical, non-telemarketing communications, including suspicious activity on the customer’s account, data security breaches, low account balances, delinquent accounts, and loan modification options, and to confirm customer-initiated servicing requests and account changes such as a change of address.

When making an outbound call, banks often project an 800 number or local phone number onto the recipient’s Caller ID. This legal practice allows the customer to return the bank’s call free of charge and ensures that any return call by the customer is routed to bank staff that are best able to respond to the customer’s needs. Although this practice is technically labeled “spoofing” because the number projected on the recipient’s Caller ID is different from the actual number from which the call originated, this practice by banks and other legitimate businesses is legal, benefits consumers, and should be protected.⁷

Through the Proposed Rule and Notice of Inquiry, the Commission seeks to combat illegal robocalls, which the Commission tentatively concluded is a call that violates the TCPA or the Telemarketing Sales Rule, or is made for the purpose of defrauding a consumer.⁸ The Commission has determined that, in many instances, illegal robocalls are facilitated through calls that spoof phone numbers *illegally*. As defined by the Truth in Caller ID Act of 2009, illegal

⁶ See *id.* at 22,628 & 22,630.

⁷ The Commission has acknowledged that this practice by banks and other businesses is legal. See *id.* at 22,630 (acknowledging that a company may “lawfully spoof[] the Caller ID on outgoing calls to utilize the business’s toll-free number that consumers can use to call back or that might be familiar to consumers in a way that helps to identify the caller”).

⁸ Proposed Rule, *supra* note 2, 82 Fed. Reg. at 22,627.

spoofing is spoofing done with “the intent to defraud, cause harm, or wrongly obtain anything of value”⁹

Based partly on the work of an industry-led Robocall Strike Force,¹⁰ the Commission has identified three categories of calls for which there is a “strong indication” that the caller is engaging in illegal spoofing:¹¹

- (1) Calls from invalid numbers. As examples of invalid numbers, the Commission lists “numbers that use an unassigned area code; that use an N11 code, such as 911 or 411, in place of an area code; that do not contain the requisite number of digits; and that are a single digit repeated, such as 000-000-000.”
- (2) Calls from valid numbers that have not been allocated to any Voice Service Provider; and
- (3) Calls from valid numbers that have been allocated to a Voice Service Provider but have not been assigned to a subscriber.¹²

The Commission proposes granting Voice Service Providers authority to block calls in these three categories. In addition, the Commission proposes granting Voice Service Providers authority to block calls from specific numbers at the request of the subscriber to that number—i.e., at the request of the person or business to whom the number has been assigned.¹³

In the Notice of Inquiry, the Commission seeks comment on identifying calls that are “presumptively illegal” and therefore should also be blocked, by identifying additional, “objective standards that could indicate to a reasonably high degree of certainty that a call is illegal.”¹⁴

Finally, in the Notice of Inquiry, the Commission seeks comment on whether protections are needed for legitimate callers that could inadvertently be blocked if Voice Service Providers are granted the authorities proposed by the Commission, such as requiring Providers to “white list” legitimate callers or establishing a process to permit lawful callers who have been blocked in error to challenge the blocking, for example by establishing a “challenge mechanism.”¹⁵

⁹ Truth in Caller ID Act of 2009 § 2, 47 U.S.C. § 227(e)(1).

¹⁰ In Summer 2016, members of the telecommunications industry established a Robocall Strike Force to “develop[] comprehensive solutions to prevent, detect, and filter unwanted robocalls.” Pub. Notice, FCC to Host First Meeting of Industry-Led Robocall Strike Force (Aug. 12, 2016), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DA-16-917A1_Rcd.pdf.

¹¹ Proposed Rule, *supra* note 2, 82 Fed. Reg. at 22,627.

¹² *Id.* at 22,627-28.

¹³ *Id.* at 22,626-27.

¹⁴ *Id.* at 22,628 & 22,629.

¹⁵ *Id.* at 22,630.

II. Discussion

A. Lawful Calls Must Be Protected to Ensure Consumers Receive Important, Beneficial, and Time-Critical Calls

ABA supports the Commission's efforts to stop illegally spoofed calls. However, any erroneous blocking of calls from a valid bank number could prevent consumers from receiving important, beneficial, and time-critical calls—such as suspicious activity alerts, data security breach notifications, and low balance alerts. Thus, if the Commission grants Voice Service Providers the authority to block certain categories of calls, it should ensure that (a) call blocking is performed only on the basis of real-time information regarding assignments of phone numbers; (b) a process is established that allows banks and other legitimate callers quickly to regain use of a number that a provider has erroneously blocked; and (c) Voice Service Providers “white list” legitimate numbers and act upon the information contained in the white list.

1. Call Blocking Should Be Performed Only on the Basis of Real-Time Information on Assignments of Phone Numbers

A central aspect of the Proposed Rule is its grant of authority to Voice Service Providers to block calls that spoof numbers that have not been assigned to any user. A challenge in successfully implementing such call blocking authority is to ensure that a Voice Service Provider does not misidentify a call from a number recently assigned to a bank or other lawful user as a call that is spoofing an unassigned number.

We support the Commission's interest in encouraging Voice Service Providers to “accurately and timely identify numbers” that have been allocated to a Provider but not assigned to a user.¹⁶ However, we understand that no infrastructure exists currently to allow Voice Service Providers to communicate with one another regarding assignments of numbers. To prevent lawful calls from being erroneously blocked, Voice Service Providers need real-time access to information about assignments of numbers, and we urge the Commission to work with Providers to establish a process for the exchange of this information.

2. The Commission Should Establish a Process that Allows Lawful Callers to Regain Access Quickly to a Number from which Calls Have Been Erroneously Blocked

ABA agrees that the Commission should establish a “challenge mechanism,” or process that allows banks and other lawful callers to regain access quickly to any number from which a Voice Service Provider has erroneously blocked outbound calls.¹⁷ Such a process should involve at least three components:

¹⁶ *Id.* at 22,628.

¹⁷ *Id.* at 22,630.

- i. First, a bank or other subscriber that learns that its calls are being blocked should be able to report the blocking and promptly re-gain access to the blocked number, as the Commission has suggested.¹⁸ We recommend that the Voice Service Provider performing the erroneous blocking should be required to remove the block within 24 hours of notification of the blocking. We also agree with the Commission’s suggestion that each Voice Service Provider should designate a single point of contact to whom subscribers (whose calls are erroneously blocked) may report the blocking.¹⁹
- ii. Second, the process established to challenge erroneous blocking should facilitate the exchange of information by Voice Service Providers of reports made by subscribers whose calls are blocked in error. As the Commission aptly observed, the Voice Service Provider providing service to a subscriber “may not be the provider that is actually blocking the [subscriber’s] calls.”²⁰
- iii. Third, when a Voice Service Provider learns that it is blocking calls from a number it had erroneously believed to be unassigned, the Provider should be required promptly to notify the number’s subscriber of the blocking and to remove the block. In most instances, we expect that the subscriber whose outbound calls are erroneously blocked will learn first of the blocking. However, we expect there will also be instances where the Voice Service Provider performing the erroneous blocking will learn of the blocking before the subscriber. Under these circumstances, prompt notification to the subscriber is necessary so that the subscriber can re-send the blocked calls and take other remedial action that may be necessary. We suggest that the Voice Service Provider be required to notify the subscriber and remove the block within 24 hours of the Provider’s learning of the erroneous block.

The components of this process will facilitate the timely removal of erroneous blocks of lawful calls. As described above, any delay in reversing erroneously blocked calls may cause time-critical, consumer-benefitting calls not to be made, which could result in far greater harm to a consumer than receipt of an illegal robocall.

Moreover, banks seek consistency in the phone number (or numbers) used for outbound and incoming calls to facilitate its customers’ recognition that the number belongs to the bank; the number is often printed on the bank’s materials as well. Any disruption to the bank’s use of a number that its customers have come to trust will impair the bank’s ability to contact its customers and may detrimentally impact the bank’s relationship with them.

One ABA member bank reported on the difficulties it is currently experiencing with a Voice Service Provider that is blocking the bank from sending text messages to a group of the bank’s

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

customers. The bank has expended several months to resolve the Provider's concerns, and these efforts continue. This bank's experience underscores the importance of establishing a process that expeditiously resolves erroneous call blocking.

3. The Commission Should Require Voice Service Providers to “White List” Legitimate Callers

ABA supports the Commission's suggestion to require Voice Service Providers to “white list” legitimate numbers.²¹ There should be a single white list that is accessible by all Voice Service Providers to avoid requiring subscribers to contact every Voice Service Provider separately to add a number to the white list.²² Furthermore, we suggest that Voice Service Providers should be required to act upon the information contained in the white list within 24 hours of the information's appearance in the list.

B. The Commission Should Permit Voice Service Providers to Block Calls Only From Invalid or Unassigned Numbers or Calls at the Request of the Subscriber to the Number

If the Commission grants Voice Service Providers authority to block certain calls, it should grant this authority only with respect to calls from invalid or unassigned numbers or in response to a request from the subscriber of the number. As the Commission observed, calls from these numbers are likely to have been illegally spoofed, in that there is a strong indication that the caller is spoofing the number to defraud or harm a consumer or the subscriber to the number.²³ Granting Voice Service Providers call blocking authority with respect to *other* categories of calls presents significantly greater risk that lawful calls will be erroneously blocked. We caution the Commission against permitting other criteria to form the basis for additional call-blocking authority unless those criteria allow Voice Service Providers to verify, with a high degree of certainty, that the caller is illegally spoofing the number from which the call purports to originate.

The Commission has historically prohibited call blocking, because the practice is inconsistent with a Voice Service Provider's statutorily defined status as a public utility that is required to connect calls—not to impose its own judgment on the legality of the calls its customers seek to make.²⁴ The criteria suggested in the Robocall Strike Task Force's report and repeated in the

²¹ *Id.*

²² *Id.*

²³ *Id.* at 22,627.

²⁴ See Communications Act of 1934, 47 U.S.C. § 202, 48 Stat. 1064 (prohibiting Voice Service Providers from discriminating in their provision of services to consumers); Proposed Rule, *supra* note 2, 82 Fed. Reg. at 22,626 (referencing the “Commission's historic prohibitions on call blocking”); *Anderson v. New York Telephone Co.*, 361 N.Y.S.2d 913, 915-16 (N.Y. 1974) (“The

Notice of Inquiry—“soliciting and reviewing information from other carriers, performing historical and real time call analytics, making test calls, contacting the subscriber of the spoofed number, inspecting the media for a call . . . , and checking customer complaint sites”²⁵—all require a subjective and contestable determination that the call is from a number that has been illegally spoofed. Consequently, blocking calls based on any of these criteria presents significantly greater risk that lawful calls will be erroneously blocked than blocking only those calls that are from an invalid or unassigned number (or in response to the subscriber’s request). The Commission should exercise care if it seeks to identify additional criteria upon which calls may be blocked to ensure that lawful calls will not be erroneously blocked.

C. The Commission Should Continue Its Important Work to Identify the Bad Actors Who Illegally Spoof Calls

Despite the laudable intent behind the Proposed Rule, it will not solve completely the problem of illegally spoofed automated calls. Consequently, we support the Commission’s continued efforts to identify the bad actors who make these calls, as the Robocall Strike Force recommends.²⁶

Granting Voice Service Providers the authority to block certain categories of calls is unlikely to prevent all illegally spoofed calls. If a Voice Service Provider blocks all calls from a particular number, the entity illegally spoofing that number can simply spoof a different number. In fact, if bad actors are prevented from spoofing invalid and unassigned numbers, as proposed by the Commission, these actors are more likely to spoof *valid* numbers that have been assigned to banks and others.

The concern that bad actors will increasingly spoof valid numbers is not hypothetical. One ABA member has reported that litigation has been commenced against the bank by a customer alleging the bank made an unlawful call under the TCPA.²⁷ The bank’s records indicate it made no such call. Such lawsuits—where a bank or other business must defend itself under the TCPA for purportedly unlawful calls that it did not make—will only increase if the Commission grants Voice Service Providers the call blocking authorities that it has proposed. Because of these concerns, we support the Commission’s ongoing work to identify—and stop—the bad actors that illegally spoof calls.

telephone company is a public utility which is bound to make its equipment available to the public for any legal use to which it can be put . . .”).

²⁵ Proposed Rule, *supra* note 2, 82 Fed. Reg. at 22,629 (quoting FED. COMM’NS COMM’N INDUSTRY ROBOCALL STRIKE FORCE, ROBOCALL STRIKE FORCE REPORT 40 (Oct. 26, 2016), *available at* <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf>).

²⁶ ROBOCALL STRIKE FORCE REPORT, *supra* note 25, at 1 (concluding that, in addition to call blocking, the Commission should “identify[] the bad actors who use robocalls to take advantage of unsuspecting consumers by using numbers assigned to others (spoofing)”).

²⁷ Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 et seq.

III. Conclusion

ABA supports the Commission's efforts to address the problems posed by illegally spoofed automated calls. But granting voice service providers the authority to block such calls presents the risk that lawful calls will be blocked too, as the Commission has recognized. Consequently, we agree with the Commission's suggestions that it establish safeguards to ensure that providers do not erroneously block lawful calls, a process to "white list" numbers belonging to legitimate callers, and a process that allows banks and other callers quickly to regain use of a number that a provider has erroneously blocked. The Commission should also grant call blocking authority only with respect to calls from invalid or unassigned numbers or in response to a request from the subscriber of the number; granting such authority with respect to other categories of calls presents significantly greater risk that lawful calls will be erroneously blocked. Finally, we support the Commission's efforts to identify and stop the bad actors that illegally spoof calls.

Sincerely,

A handwritten signature in black ink, reading "Jonathan Thessin". The signature is written in a cursive style with a large, looped initial "J".

Jonathan Thessin
Senior Counsel, Center for Regulatory Compliance